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ABSTRACT

The reason teachers want collective bargaining is far simpler than has heretofore been recognized by scholars. In de jure collective bargaining, agreements arrived at in the bargaining process are legal and binding on both parties. In de facto negotiation, agreements could be struck between the teachers and the board of education, but, when subjected to political or budgetary pressures, the board could abrogate the agreement without the teachers having any legal recourse. (Author/IRT)

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CHANGING THE POWER BALANCE

PAPER PRESENTATION TO A SYMPOSIUM

ON COLLECTIVE BARGAINING

April 26, 1976

AMERICAN EDUCATIONAL RESEARCH ASSOCIATION

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by

J. Michael Fay, Ph.D

Five years ago, a group from Los Angeles presented to the AERA Convention in St. Louis a simulation model for power sharing. They were convinced then, on the heels of a long teacher strike in Los Angeles, that all teachers want is power to promote organizational self-interest. They thought then that if only teachers could be taught to share power, as the simulation was designed to do, the problems of obtaining power would be minimized, and public education could be saved for the children.

What they overlooked at that point in time was that power-sharing assumed a willingness on the part of those in power (school administrators) to "share", a naive view not tested in the realities of schooling in a mass society of the 1970's, a time when administrators no longer control teacher organizations and paternalism no longer has efficacy as a problem-solving approach to maintaining power.

The organizers of that symposium were absolutely correct about teachers wanting power, however; they just neglected to consider this as legitimate role and function of organized teachers.

Teachers want power to change the balance of power to deal with more than wages, hours, and working conditions. Teachers more than ever are being held accountable for the product, but have little control over the resources that are applied to the instructional program. No other group of professionals

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in our society is held accountable for socio-economic conditions which many of you know have an intimate affect on students' learning conditions and abilities; yet teachers are, and they have no power as to the allocation of resources. Productivity depends upon resource allocation, and accountability stems from all of this.

Thus, to change the power balance, teachers have finally adopted the labor model of acquiring this power through the peaceful means of collective bargaining.

In Los Angeles, we had collective bargaining for a number of years -- what you call "de facto." We had the power then, and we have it now. So the critical question is, "Why do we want de jure collective bargaining?" First, we have to make a distinction between de facto and de jure. If, in fact, we have collective bargaining, why must it be made legal? There is only one reason: It is a reason that is overlooked by all the theoriticians -- and as bright as these theoriticians are, they come up with all the reasons why teachers want power, they overlook the one simple, essential reason why we fight to have it de jure.

The essence of legal collective bargaining, the essential difference between de jure and de facto, is that agreements that are arrived at in the bargaining process are legal and binding on both parties. You see, up until now, we could bargain with the Board of Education; we could make an agreement that such and such was going to happen. The Board, when having some other pressures put on it, be they political or budgetary, say, "We are going to abrogate that agreement, and since it was not legally binding in the first place, we don't have a legal problem." This is the main reason why Boards and administrators have fought collective bargaining -- not because they didn't

want to bargain with their teachers; it's because they didn't want the results of that product to be legally binding. Now, by making an agreement a legal document, we change the power balance since now we can go to court and say, "Such and such is a violation of contract -- we want it enforced." And, by the way, so can they.

How did we come to this imperative? Let me tell you how I and my colleagues in Los Angeles came to want collective bargaining agreements. A long time ago, 1968 -- as a matter of fact, it was my very first experience as a negotiator for teachers in Los Angeles -- when we used to negotiate in public in what we call a "goldfish bowl" under the Winton Act. At that time, we had a teacher who was accused of conspiracy to commit a misdemeanor. Conspiracy to commit a misdemeanor is a felony. The administrative practice at that time was to transfer a teacher who was charged with a felony out of the classroom and into a central office assignment.

When this teacher said, "I am presumed guilty before my innocence is determined by a court of law, I will lose a great deal of respect from my students and from the community, I do not want to be transferred until and unless I am proven guilty. After all, I am not being charged with a moral offense, but a technically legal one."

Up until this time, teachers had never objected to the administrative practice of taking accused felons out of the classroom. But this teacher's argument touched a very deep core nerve in all of us teachers, and pointed out to us that we were, in fact, not doing our part in upholding teachers' constitutional rights. So, we asked for a new policy which in effect said, "You can do what you've been doing unless the teacher refuses and wants a hearing on the matter; then you have to go through the legal process before you move him out." We arrived at agreement with the Board of Education.

After all, it was a policy that made sense; it codified practice. It allowed an escape hatch for an unjust charge. I naively thought we had a good policy and the matter would proceed fairly. However, within 30 seconds of the Board voting 7 to 0 on that new policy -- within 30 seconds -- the Board of Education suspended all Board rules and administrative regulations in order to deal with that teacher as an individual. During the civil rights crisis in the 1960's, the Los Angeles Board regularly suspended all their rules for the purpose of taking care of an individual.

I don't know what this kind of procedure suggests to you, and I am not suggesting that the Board of today operates like the Board of that day, which was only 8 years ago; but it was that incident that convinced me that we must have binding agreements if we are to have anything that is rational as a way of dealing with employer-employee relations. And it is simply that -- that is all that is necessary. We want to have what we have agreed to and enforceable bi-laterally. We cannot depend on paternalistic assurances that what is best for us will be decided for us. How many of them -- or you here -- would stand for being in a high school situation faced daily with half of your class not being there -- except that every day, it's a different half of the class -- and you are accountable for their progress or lack thereof; faced daily with fear; faced daily with intimidation; faced daily with the prospect of physical and emotional violence...of being raped, beat up, molested...all as a part of your daily job, and be told to report back to work the day after by some bureaucrat who sits in an air-conditioned office or an ivory tower with none of these pressures, making very profound conclusions or decisions that affects the working lives of all the teachers. My feeling is that if bureaucrats had to spend every 7th year in a classroom in the ghettos of our nation, they would have a different perspective on what its like, and what teachers

want and need to be productive educators. I might say there are some advantages to this for the employer. You know, it is really a very efficient process for an employer to sit down with a team that represents a whole unit of say, 25 to 30,000 people than it is to deal individually. And, it is more efficient to deal with all the problems that arise at one point in time during the year rather than all year long. Also a fact which should not be overlooked is that once we as the bargaining representative agree to certain rules, we have an obligation to enforce those rules on our members. We, in effect, take a lot of the heat for management; and that is only as it should be.

Now, the title of my presentation may have led you to believe I was going to talk about the master chess game we play, or of some dramatic change such as the Board of Education now turns over all the money, all the administrative functions and all the credit cards and all the limosines to the teachers. Such is not the case. Research has shown that the Boards of Education naturally have not given away the store after the legalization of collective bargaining. I merely wanted to point out to you today that the reasons for collective bargaining are far more simple than we are led to believe.

What will be the essential change now that we have <u>de jure</u> collective bargaining? My predictions are that it will be pretty much business as usual, as far as the actual techniques of bargaining and the actual settlements. There are just so many resources and there are many programs, all competing for a piece of the pie. We are not just now beginning to use collective action to influence that process -- that's already been there. What we now have is an increased measure of dignity -- the ability to have a dispute settled in a judicial manner or legal manner, rather than in the

streets. I might add at this point in closing that impass resolution is something that the drafters of the Rodda Act were very concerned about. They designed an elaborate procedure for impass -- making sure it goes through certain steps and cooling-off periods and things of that nature. It is because the word "strike" and "collective bargaining" are thought of synonimously. I have been to many seminars on collective bargaining; I've taught classes in collective bargaining at the Claremont Graduate School, and I know that characteristically, people who do not involve themselves in the process itself equate collective bargaining and strike synonimously. I can tell you, as a practitioner, that a strike is a weapon of last resort. It's one that comes from total frustration, at least when you are dealing with teachers and their administrators -- total frustration in the communication process with bureaucrats that have no feelings, and no sensitivity for what a teacher has to put up with or deal with in modern-day schools. I am sure the drafters did this in order to develop consensus -- to prevent strikes, to tie things up in a long, legal process, and thereby delay agreements. But if the result is frustration, there will be strikes anyway, as a means of protest, legal or not.

Now, I have some more to say about the shifting of the power balance, but I thought it would be more appropriate if I provided those remarks during our question and answer period because, for my money and your money, too, the process of questioning and answers is much more informative than what I may have come here to say because it gets your agenda out on the table rather than just mine. The essential point of mine is that the reason for collective bargaining for teachers in the public sector is far simpler than has heretofore been recognized by the scholars of our nation. And now, let's discuss your agenda items. If you have items you wish further

information on, please write me in care of United Teachers-Los Angeles, 2511 West Third Street, Los Angeles, California 90057.